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IN THE

Supreme Court of the United States

October Term, 1982

No. 82-1826

ARCHIE BOND, JR., *et al.*,
Petitioners,

v.

GENERAL MOTORS CORPORATION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT, GENERAL MOTORS CORPORATION, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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REPORTS OF OPINIONS

The opinions of the United States Court for the Northern District of Ohio, and the United States Court of Appeals for the Sixth Circuit have not been reported. A copy of each opinion is annexed to the Petition.

JURISDICTION OF THE COURT

The decisions of the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit are wholly in accord with sound and well-settled principles of law. The Petition for a Writ of Certiorari presents no valid reason for the exercise of this Court's discretion to review the decisions below.

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Did the District Court err in holding, and the Court of Appeals err in affirming, that "a decision of a joint committee selected by the parties for definitive settlement of grievances is accorded the same degree of finality as a decision of a neutral arbitrator" for purposes of Section 301 of the Labor Management Relations Act? (Memorandum and Order at 7; Petitioners' Appendix at B-16).

STATUTES INVOLVED

The Petition for a Writ of Certiorari is premised on the contention that petitioners were entitled to litigate the merits of a dispute arising under a collective bargaining agreement in the district court. It is well-established, however, that Section 301 of the Labor Management Relations Act does not allow a court jurisdiction, except in narrow circumstances not pertinent here, to determine the merits of a controversy arising under a collective bargaining contract between a union and an employer when the contract contains a final adjustment procedure agreed upon by the parties. Specifically, 29 U.S.C. § 173(d) provides, in relevant part:

> Final adjustment by a method agreed upon by the the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

As discussed below, the appeals procedure set forth in the collective bargaining agreement which is the subject of this action is the "final adjustment . . . method agreed upon by the parties" and no reason exists for disturbing the decision rendered pursuant to that final adjustment method.

COUNTERSTATEMENT OF CASE

Archie Bond, Jr., Eugene K. Coon and William Lacek are members of the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") and the UAW Local #1005 and are employed by General Motors Corporation ("General Motors")[1] at its plant in Parma, Ohio. During certain periods in 1979 and 1980, each of the petitioners was laid off and applied for supplemental unemployment benefits ("SUBenefits") provided under the Supplemental Agreement Covering Supplemental Unemployment Benefit Plan ("Supplemental Agreement"), a contract negotiated by and between General Motors and the UAW.[2] Thereafter, each received SUBenefits determined in accordance with the provisions of the Supplemental Agreement. (Memorandum and Order at 1-2; Petitioners' Appendix at B-2, 3).

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[1]Pursuant to Rule 28.1 of this Court, the following is a listing of all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of respondent General Motors Corporation: Motor Enterprises, Inc. (partly owned by the U.S. Small Business Administration); GMFanuc Robotics Corp.; Colmotors, Columbia; General Motors Iran Limited, Iran; Isuzu Motors Limited, Japan; GM Allison Japan Limited, Japan; General Motors Kenya Limited, Kenya; Saehan Motor Company, Ltd., Korea; General Motors Pilipinas, Inc., Philippines; Saudi American Machinery Maintenance Company, Ltd., Saudi Arabia; and, Industria Delova Automobile, Yugoslavia.

[2]Relevant portions of the Supplemental Agreement are reproduced in Appendix I. The provisions of the Supplemental Agreement are cited by article and section number.

On May 13, 1980, the Secretary of Labor certified that employees at the Parma plant who had been totally or partially separated from employment on or after June 1, 1979 were eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, 19 U.S.C. § 2101 *et seq.*[3] Bond, Coon and Lacek then applied for and received TRA benefits for periods of layoff which occurred subsequent to the June 1, 1979 certification date. (Memorandum and Order at 2; Petitioners' Appendix at B-4, 5).

General Motors determined that, under the terms of the Supplemental Agreement, Bond and Coon received overpayments of SUBenefits because of the TRA benefits. Article II, Sections 1 and 3; Article IX, Section 23; Article II, Section 6. Pursuant to Article II, Section 6 of the Supplemental Agreement, General Motors notified both Bond and Coon of the overpayments and, upon their failure to refund the overpayment, began withholding, on behalf of the trust fund, certain amounts from their wages in accordance with Article II, Section 6(b). With respect to Lacek, General Motors determined the amount of TRA benefits Lacek had received and adjusted his SUBenefit payments as provided in Article II, Sections 1 and 3 and Article IX, Section 23. (Memorandum and Order at 2-4; Petitioners' Appendix at B-5, 6).

Bond appealed to the Local Committee in accordance with Article V, Section 3 of the Supplemental Agreement. On January 20, 1981, the Local Committee unanimously denied Bond's appeal, holding that General Motors had the right to make deductions for the overpayment of SUBenefits on behalf of the trust fund and that it had complied with the applicable notice provisions. (Memorandum and Order at 4; Petitioners' Appendix at B-7, 8).

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[3]Trade Readjustment Allowances ("TRA") are a type of federal unemployment benefit payable to employees of industries which are certified by the Secretary as affected by increased foreign competition. 19 U.S.C. § 2101 *et seq.*

Under the terms of the Supplemental Agreement, the decision of the Local Committee is final; no appeals to the Board of Administration ("Board") are permitted unless the Local Committee has not reached a unanimous decision. Article V, Section 3(b)(1)(iii); Article VI, Section 2(b)(7)(iv). Bond filed an appeal form with the Board, but because the Local Committee had unanimously resolved the appeal, the form was returned. Bond, Coon and Lacek then commenced this action alleging that General Motors had breached the Supplemental Agreement. Petitioners further alleged that the union had breached its duty of fair representation by failing "to question" the requirement that overpayments be repaid to the SUBenefit trust fund and by "purposely, arbitrarily and capriciously" failing to process Bond's appeal challenging the recoupment of the SUBenefit overpayment.[4] (Memorandum and Order at 4; Petitioners' Appendix at B-8, 9).

The District Court granted summary judgment in favor of General Motors and the unions stating, *inter alia:*

> It was clearly the intent of the parties to the Supplemental Agreement that the appeals procedure

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[4]The retroactive certification of employees as eligible to receive TRA benefits has spawned numerous appeals under the collective bargaining agreement by employees who have attempted to obtain a windfall. As noted by the court in *Lumpkins v. General Motors Corp.*, No. 81-0402-C(5) (E.D. Mo. 1981) (copy reproduced in Appendix II):

> Under plaintiffs' theory, workers would actually benefit more from their unemployment . . . . [A]n unemployed worker could actually receive between 160 and 190 percent of his usual take-home pay if he were permitted to collect his unemployment benefits in the manner prescribed by plaintiffs.

Even in this case, the petitioners have never contended that the determination of the amount of SUBenefits each of them was actually entitled to receive was in any way incorrect. Rather, petitioners have contended that the provision in the collective bargaining agreement for notice of overpayment (Article II, Section 6) has been misinterpreted. (Petition at 13).

provided therein was to be the exclusive method for resolving controversies involving SUBenefits.

(Memorandum and Order at 5; Petitioners' Appendix at B-11).[5] The decision of the District Court was affirmed by the Sixth Circuit.

SUMMARY OF ARGUMENT

A review by this Court of the within matter would not fulfill any of the purposes set forth in Rule 17 of this Court for the granting of a writ of certiorari. The decisions by the District Court for the Northern District of Ohio and the Court of Appeals for the Sixth Circuit to dismiss the within action were correct and were based upon sound and well-settled principles of law. A joint union-management committee is vested with authority to resolve disputes arising under a bargaining agreement and is a proper vehicle for the final settlement of such disputes. Petitioners' assertions to the contrary ignore the decisions of this Court directly in point. There is no reason for this Court to grant this Petition.

ARGUMENT

I. THE CASE WAS CORRECTLY DECIDED UPON SOUND AND WELL-SETTLED PRINCIPLES OF LAW BY THE COURTS BELOW.

A. The Appeals Procedure Set Forth in The Supplemental Agreement Is The "Final Adjustment . . . Method Agreed Upon By The Parties."

The appeals procedure established under the Supplemental Agreement requires that a dispute be submitted

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[5]The District Court also found that unions had not breached any duty of fair representation stating:

> The plaintiffs' conclusory allegations utterly fail to reveal any indication of how the defendant unions' action or inaction was arbitrary, discriminatory or in bad faith.

(Memorandum and Order at 10; Petitioners' Appendix at B-22).

first to the Local Committee, a committee composed of a union representative and a management representative. Article V, Section 3; Article VI, Section 2(b)(7)(i). If, and only if, the Local Committee is unable to resolve the dispute unanimously, the employee may appeal to the Board. Article VI, Section 2(b)(7)(iv); Article V, Section 3(b)(1)(iii). The Board, like the Local Committee, is composed of union representatives and management representatives. Article VI, Section 2(a)(1).[6]

Petitioners' sole argument in this Court is that "it stretches logic to assume that a Board of Union and Management, which has the same joint interest in the outcome of the interpretation of the collective bargaining agreement, can sit as fair and impartial arbitrators." (Petition at 12). Petitioners, however, never describe any "joint interest" of General Motors or the unions in their Petition. More importantly, petitioners completely ignore the decisions of this Court and lower federal courts which are directly contrary to the petitioners' argument.

In giving effect to the congressional policy embodied in 29 U.S.C. § 173(d), this Court has stated:

> Section 203(d) of the Labor Management Relations Act . . . 29 U. S. C. § 173(d) states, "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ." That policy can be effectuated only if the means chosen by the parties for settlement of their differences under the collective bargaining agreement is given full play.

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[6]If the Board cannot resolve the dispute by a majority vote, the dispute is to be resolved by an Impartial Chairman. Article VI, Section 2(a)(2).

Steelworkers v. American Mfg. Co., 363 U.S. 564, 566 (1960).

In *Truck Drivers Union v. Riss & Co.*, 372 U.S. 517 (1963) (per curiam), this Court squarely held that joint committees, committees like the Local Committee and the Board here, are equally suitable as a "final adjustment . . . method agreed upon by the parties":

> If, as petitioners allege, the award of the Joint Area Cartage Committee is under the collective bargaining agreement final and binding, the District Court has jurisdiction under § 301 to enforce it . . . (citations omitted). Plainly, this allegation cannot be rejected on the basis merely of what the present record shows. It is not enough that the word "arbitration" does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." (citations omitted). Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under § 301. And if the Joint Area Cartage Committee's award is thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance. (citations omitted).

Id. at 519. *See Humphrey v. Moore*, 375 U.S. 335, 351 (1964) ("The decision of the committee, reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is."). *Cf. United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981) (Action to vacate the decision of a joint board

barred by the statute of limitations governing arbitration awards).[7]

The lower federal courts, following the mandate of this Court, have held consistently that decisions of joint union-management boards are entitled to the same judicial deference as decisions rendered pursuant to other types of dispute resolution. *See, e.g., Teamsters Local 30 v. Helms Express, Inc.*, 591 F.2d 211 (3rd Cir.), *cert. denied*, 444 U.S. 837 (1979); *United Mine Workers v. Barnes & Tucker Co.*, 561 F.2d 1093 (3rd Cir. 1977); *Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir. 1972), *cert. denied*, 411 U.S. 965 (1973); *Navajo Freight Lines, Inc. v. International Brotherhood of Teamsters*, 306 F. Supp. 536 (D. Colo. 1969).[8]

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[7]Petitioners attempt to draw a distinction between "taking a factual question before the committee in regard to a personal grievance" and "alleging that the language of Article II Section 6 of the SUB Agreement has been misinterpreted." (Petition at 13). This argument is equally without merit since the statute itself applies to any disputes "arising over the application or interpretation" of the agreement. 29 U.S.C. § 173(d). Moreover, this Court has expressly held that any dispute must be deemed to be arbitrable "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960). *See also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964).

[8]In support of their assertions, petitioners cite cases which are totally unrelated to the type of collectively bargained procedures which are the subject of this action. In fact, most of petitioners' cases address internal union procedures, procedures which "were not bargained for by the employer and union" and which are "significantly different" from the procedures petitioners challenge here. *Clayton v. International Union, UAW*, 451 U.S. 679, 687 (1981). Hence, the reasoning set forth in those cases has no application to this Petition.

There is no conflict between decisions of the courts of appeal or decisions of this Court and the decision below. The principles governing this action have been long established and consistently applied. The courts below adhered to these principles and did not depart in any way "from the accepted and usual course of judicial proceedings." U.S. Sup. Ct. Rule 17.1(a), 28 U.S.C.

B. No Reason Exists For Disturbing The Decision Rendered By The Joint Committee Pursuant To The Collective Bargaining Agreement's Dispute Procedure.

Petitioners assert that General Motors and the unions had an "interest" in the proceedings which precluded the joint union-management committee from properly resolving the issue. The only "interest" ever asserted by petitioners, a "pecuniary interest" of General Motors and the unions in the recovery of SUBenefit overpayments, was first raised by petitioners in their brief before the Sixth Circuit.[9] Even a cursory review of the Supplemental Agreement, however, clearly shows that petitioners and their co-workers are the only persons who benefit from the trust fund from which the SUBenefits are paid. Article IX, Section 14. For example, when it is determined that an overpayment of SUBenefits has been made and the employee has failed to return the overpayment, the facts of this case, "General Motors is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) . . . and to pay the amounts deducted *to the Trustee.*" Article II, Section 6(b) (emphasis added). *See, e.g.*, Article VI, Section 2(b)(2)(iv) (In the event an employee appeals the deter-

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[9]Having failed to raise the issue in the district court, petitioners are barred from raising the issue in these proceedings. *Hormel v. Helvering*, 312 U.S. 552 (1941); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 429 U.S. 862 (1976).

mination with respect to a payment or denial of a SUBenefit and the Board rules that the SUBenefit should be paid, the Board is "to *notify the Trustee* . . . .") (emphasis added). Petitioners' vague and unsupported assertions of a "joint interest in the outcome of the interpretation of the collective bargaining agreement" are patently frivolous.

The decisions of the District Court for the Northern District of Ohio and the Court of Appeals for the Sixth Circuit correctly applied established principles of law. There is no unresolved question of importance in this case which merits this Court's time and attention.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitioners in this case demonstrate none of the grounds set forth in Rule 17 of this Court for the granting of a writ of certiorari. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing Brief of Respondent, General Motors Corporation, were mailed, postage prepaid, this ..... day of June, 1983 to each of the following:

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APPENDIX I

Relevant Portions of the Supplemental Agreement:

ARTICLE II

Section 1. Regular Benefits

(a) The Regular Benefit payable to an eligible Employe for any Week beginning on or after October 1, 1979 shall be an amount which, when added to his State Benefit and Other Compensation, will equal 95% of his Weekly After-Tax Pay, minus $12.50 to take into account work related expenses not incurred; provided, however, that such Benefit shall not exceed $90 for any Week beginning prior to October 1, 1979, and $115 for any Week beginning on or after October 1, 1979, with respect to which the Employe is not receiving State System Benefits because of a reason listed in item (2) or (6) of Section 1(b) of Article I and is laid off or continues on layoff by reason of having refused to accept work when recalled pursuant to the Collective Bargaining Agreement or having refused an offer by the Company of other available work at the same Plant or at another Plant in the same labor market area (as defined in Section 3(b)(3) of Article I); . . . .

Section 3. State Benefit and Other Compensation

(a) An Employe's State Benefit and Other Compensation for a Week means:

(1) the amount of State System Benefit received or receivable by the Employe for the Week or the estimated amount which the Employe would have received if he had not been ineligible therefor solely:

(i) as set forth in item (8) of Section 1(b) of Article I (concerning a Week for which his pay received or receivable from the Company

was less than the amount which disqualifies him for a State System Benefit but not less than such amount minus $2); or

(ii) under certain of the circumstances determined to be covered by item (11) of Section 1(b) of Article I (concerning a week for which he was denied a State System Benefit and it is determined that, under the circumstances, it would be contrary to the intent of the Plan to deny him a Benefit); . . . .

Section 6. Benefit Overpayments

(a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is applicable; provided, however, that no repayment shall be required of the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

(b) If the Employe shall fail to return such amount of overpayment promptly:

(1) with respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the Fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits or compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and

(2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.

The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

ARTICLE V

Section 3. Appeals

(a) Applicability of Appeals Procedure

(1) The appeals procedure set forth in this Section may be employed only for the purposes specified in this Section.

(2) No question involving the interpretation or application of the Plan shall be subject to the grievance procedure provided for in the Collective Bargaining Agreement.

(b) Procedure for Appeals

(1) First Stage Appeals

(i) An Employe may appeal from the Company's written determination (other than determinations made in connection with Section 1(b)(11) of Article I) with respect to the payment or denial of a Benefit or a Separation Payment by filing a written appeal with the Local Committee on a form provided for that purpose.

In situations where a number of Employes had filed applications for Benefits or Separation Payments under substantially identical conditions, an appeal may be filed with respect to one of such Employes, in accordance with procedures established by the Board, and the decision thereon shall apply to all such Employes. If there is no Local Committee at any Plant because of a discontinuance of such Plant, the appeal may be filed directly with the Board. Appeals concerning determinations made in connection with Section 1(b)(11) of Article I (contrary to the intent of Plan) shall be made directly to the Board.

(ii) The appeal shall be filed with the designated Company representative within 30 days following the date of mailing of the determination appealed. If the appeal is mailed, the date of filing shall be the postmark date of the appeal. No appeals will be valid after the 30-day period.

(iii) The Local Committee shall advise the Employe, in writing, of its resolution of, or failure to resolve his appeal. If the appeal is not resolved within 10 days after the date thereof (or such extended time as may be agreed upon by the Local Committee), the Employe, or any 2 members of the Local Committee, at the request of the Employe may refer the matter to the Board for disposition.

(2) Appeals to the Board

(i) An appeal to the Board shall be considered filed with the Board when filed with the designated Company representative for the Plant at which the first stage appeal was considered by the Local Committee.

(ii) Appeals shall be in writing, shall specify the respects in which the Plan is claimed to have been violated, and shall set forth the facts relied upon as justifying a reversal or modification of the determination appealed from.

(iii) Appeals by the Local Committee to the Board with respect to Benefits or Separation Payments shall be made within 20 days following the date the appeal is first considered at a meeting of the Local Committee, plus such extension of time as the Local Committee shall have agreed upon. Appeals by the Employe to the Board with respect to Benefits or Separation Payments shall be made within 30 days following the date the notice of the Local Committee's decision is given or mailed to the Employe. If the appeal is mailed, the date of filing shall be the postmark date of the appeal.

(iv) The handling and disposition of each appeal to the Board shall be in accordance with regulations and procedures established by the Board.

(v) The Employe, the Local Committee or the Union Members of the Board may withdraw any appeal to the Board at any time before it is decided by the Board, on a form provided for that purpose.

(vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim or issue on which the Board is empowered to rule hereunder.

(vii) The Local Committee shall be advised, in writing, by the Board of the disposition of any appeal previously considered by the Local Committee, and referred to the Board. A copy of such dispostion shall be forwarded to the Employe by the Local Committee.

ARTICLE VI

Section 2. Board of Administration of the Plan

(a) Composition and Procedure

(1) There shall be established a Board of Administration of the Plan consisting of 6 members, 3 of whom shall be appointed by the Company (hereinafter referred to as the Company members) and 3 of whom shall be appointed by the Union (hereinafter referred to as the Union members). Each member of the Board shall have an alternate. In the event a member is absent from a meeting of the Board, his alternate may attend, and, when in attendance, shall exercise the powers and perform the duties of such member. Either the Company or the Union at any time may remove a member appointed by it and may appoint a member to fill any vacancy among the members appointed by it. The Company and the Union each shall notify the other in writing of the members respectively appointed by it before any such appointment shall be effective.

(2) The members of the Board shall appoint an Impartial Chairman, who shall serve until requested in writing to resign by 3 members of the Board. If the members of the Board are unable to agree upon a Chairman, the Umpire under the Collective Bargaining Agreement shall make the appointment; provided, however, that the Company and Union members may, by agreement, request such Umpire to serve as the Impartial Chairman of the Board. The Impartial Chairman shall be considered a member of the Board and shall vote only in matters within the Board's authority to determine which the other members of the Board shall have been unable to dispose of by majority vote, except that the Impartial Chairman shall have no vote concerning determinations made in connection with Section 1(b)(11) of Article I (contrary to intent of Plan).

(3) At least 2 Union members and 2 Company members shall be required to be present at any meet-

ing of the Board in order to constitute a quorum for the transaction of business. At all meetings of the Board the Company members shall have a total of 3 votes and the Union members shall have a total of 3 votes, the vote of any absent member being divided equally between the members present appointed by the same party. Decisions of the Board shall be by a majority of the votes cast.

(b) Powers and Authority of the Board

(1) It shall be the function of the Board to exercise ulitmate responsibility for determining whether an Employe is eligible for a Benefit or Separation Payment under the terms of the Plan, and, if so, the amount of the Benefit or Separation Payment.

The Board shall be presumed conclusively to have approved any initial determination by the Company unless the determination is appealed as set forth in Section 3(b) of Article V.

(2) The Board shall be empowered and authorized and shall have jurisdiction to,

(i) hear and determine appeals by Employes;

(ii) obtain such information as the Board shall deem necessary in order to determine such appeals;

(iii) prescribe the form and content of appeals to the Board and such detailed procedures as may be necessary with respect to the filing of such appeals;

(iv) direct the Company to pay Automatic Short Week Benefits or to notify the Trustee to pay other Benefits or Separation Payments pursuant to determinations made by the Local Committee or the Board;

(v) prepare and distribute, on behalf of the Board, information explaining the Plan;

(vi) rule upon disputes as to whether any Short Work Week resulted from an act of God, as defined in Article VII, Section 5(c)(1);

(vii) rule upon disputes as to whether any Short Work Week, occurring during a period when the CUCB is less than $625, is deemed to be scheduled or unscheduled; and

(viii) perform such other duties as are expressly conferred upon it by the Plan.

(3) In ruling upon appeals, the Board shall have no authority to waive, vary, qualify, or alter in any manner the eligibility requirements set forth in the Plan, the procedure for applying for Benefits or Separation Payments as provided for therein, or any other provision of the Plan; and shall have no jurisdiction other than to determine, on the basis of the facts presented and in accordance with the provisions of the Plan:

(i) whether the first stage appeal and the appeal to the Board were made within the time and in the manner specified in Section 3(b) of Article V,

(ii) whether the Employe is eligible for the Benefit or Separation Payment claimed and, if so,

(iii) the amount of any Benefit or Separation Payment payable; and

(iv) whether a protest of an Employe's State System Benefit by the Company is frivolous.

(4) The Board shall have no jurisdiction to act upon any appeal filed after the applicable time limit or upon any appeal that does not comply with the Board-established procedures.

(5) The Board shall have no power to determine questions arising under the Collective Bargaining Agreement, even though relevant to the issues before the Board. All such questions shall be determined through the regular procedures provided therefor by

the Collective Bargaining Agreement, and all determinations made pursuant to the Agreement shall be accepted by the Board.

(6) Nothing in this Article shall be deemed to give the Board the power to prescribe in any manner internal procedures or operations of either the Company or the Union.

(7) The Board shall provide for a Local Committee at each Plant of the Company to handle appeals from determinations as provided in Section 3(b)(1) of Article V, except determinations made in connection with Section 1(b)(11) of Article I (contrary to intent of the Plan).

(i) The Local Committee shall be composed of 1 member designated by the Company members of the Board and 1 member designated by the Union members of the Board. Appointments to the Local Committee shall become effective when the members' names are exchanged in writing between the GM Department of the Union and the Industrial Relations Staff of the Company. Either the Company or Union members of the Board may remove a Local Committee member appointed by them and fill any vacancy among the Local Committee members appointed by them.

(ii) Any individual appointed by the Union as a member of a Local Committee shall be an Employe having Seniority at the Plant where, and at the time when, he is to serve as a member of the Local Committee.

(iii) In addition to their regularly appointed Local Committee member, the Union members of the Board may name 1 additional Employe, who qualifies under (ii) above, as an alternate Local Committee member to serve during temporary specified periods when a Local Committee member is absent from the Plant during scheduled working hours and unable to serve on the Committee. The Company members of the Board may

also name 1 alternate Local Committee member to serve during temporary specified periods. The alternate Local Committee member may serve on the Local Committee when the party desiring him to serve gives notice, locally, to the other party of such temporary service and the period thereof.

(iv) All Local Committee members must be present at any meeting in order for the Local Committee to transact business. Each Local Committee member shall have one vote and decisions of the Local Committee shall be unanimous.

ARTICLE IX

* * *

(14) *"Fund"* means a trust fund established under the Plan to receive and invest Company contributions and to pay Benefits and Separation Payments;

* * *

(23) *"State System"* means any system or program established pursuant to any state or federal law for paying benefits to persons on account of their unemployment under which a person's eligibility for benefit payments is not determined by application of a "means" or "disability" test. State System also includes:

(a) any system or program established by law to supplement, replace or extend the benefits available under any state or federal laws for paying benefits to persons on account of their unemployment (such as the Trade Readjustment Allowances provided under the Federal Trade Expansion Act of 1962, as amended, and the Trade Act of 1974), or

(b) any such system or program established for the primary purpose of education or vocational training where such programs may provide for training allowances;

"*State System Benefit*" means an unemployment benefit payable under a State System, including any dependency allowances and training allowances but excluding any allowance for transportation, subsistence, equipment or other cost of training and excluding any "Back-To-Work" payment for a week made, in addition to the regular State System Benefit otherwise payable for such week, to an Employe who has been on layoff for a prescribed number of weeks and returns to full-time work within a prescribed period, and also shall mean a lost time benefit which an Employe received under a Workers Compensation law or other law providing benefits for occupational injury or disease, while not totally disabled and while ineligible for a sickness and accident benefit under the Insurance Program. If an Employe receives a Workers Compensation benefit while working full time and a higher Workers Compensation benefit while on layoff from the Company, only the amount by which the Workers Compensation benefit is increased shall be included;

* * *

APPENDIX II

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALPHONSO LUMPKINS, et al., *Plaintiffs,*	
v.	
GENERAL MOTORS CORPORATION, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA	Cause No. 81-0402-C (5)
Defendants.	**Filed:** October 27, 1981

MEMORANDUM AND ORDER

This matter is before the Court on separate motions to dismiss of defendants General Motors Corporation (GMC) and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Plaintiffs instituted this action seeking, *inter alia,* declaratory judgment and injunctive relief. The Court's jurisdiction is invoked pursuant to 29 U.S.C. § 185, *et seq.,* 28 U.S.C. §§ 2201-2202 and 28 U.S.C. § 1331. Lumpkins and other named plaintiffs claim to represent a class of employees similarly situated. Without ruling on the propriety of a class action in this instance, the Court will focus on the circumstances giving rise to Lumpkins' complaint as generally indicative of the situations of the other named plaintiffs.

This action is rooted in the financial problems that are currently plaguing the nation's automobile industry. Lumpkins, at the relevant times herein, was an hourly-rate employee of GMC and a member of UAW, Local 25. Lumpkins was laid off, effective December 24, 1979, as a result of the cessation of production of passenger cars at the GMC plant in St. Louis, Missouri. Pursuant to an agreement entitled "Supplemental Agreement Covering Supplemental Unemployment Benefit Plan" (the Supplemental Agreement), Lumpkins filed for and received supplemental unemployment benefits (SUBenefits). The Supplemental Agreement is included in the main collective bargaining agreement between GMC and UAW, effective September 14, 1979. Under the SUBenefit plan, an eligible employee receives supplemental income which, when added to State benefits and other compensation received by the participant, equals 95 percent of his weekly after-tax pay. (*See* The Supplemental Agreement, Art. II, Section 1). Lumpkins received SUBenefits for each week beginning with the week that ended on January 13, 1980 through the week that ended on July 6, 1980.

In May, 1980, the Secretary of Labor "certified" the employees of the St. Louis GMC plant as eligible for Trade Readjustment Allowances (TRA) pursuant to the Trade Act of 1974, 19 U.S.C. §§ 2101-2487. Benefits under TRA are distributed to those employees who, as determined by the Secretary, were separated from their employment as a result of foreign competition. The Secretary determined the TRA benefits to be retroactive to lay-offs occurring on or after June 1, 1979. Thus, Lumpkins was eligible for the TRA benefits. The Missouri Division of Employment Security began issuing retroactive TRA benefits in July, 1980.

In August, 1980, GMC management mailed Form GM-SUB-4 TRA-EST (4/80), to Lumpkins, advising him that he had been overpaid SUBenefits due to the TRA

benefits he had received. Upon Lumpkins' failure to return the overpayments, GMC began withholding amounts of his wages pursuant to Article II, Section 6 of the Supplemental Agreement.

Lumpkins objected to GMC's withholding of his wages and appealed to the "Local Committee" according to Article V, Section 3 of the Supplemental Agreement, asserting that TRA benefits are not deductible for SUBenefits and that GMC had failed to properly notify him of the overpayments. The Local Committee failed to resolve Lumpkins appeal. UAW Local 25 members appealed the Local Committee decision on Lumpkins behalf to the Joint Board of Administration. On August 28, 1981, the Board of Administration upheld the action taken by GMC. According to the terms of the Supplemental Agreement, the decision by the Board of Administration is final and binding on all the parties. (*See* Art. V, Section 3, Supplemental Agreement.)

Plaintiffs next initiated this action asserting, in essence, that defendant UAW failed to adequately represent plaintiffs' interest by failing to contest the GMC action and that defendant GMC unlawfully deducted the alleged overpayments pursuant to Missouri law, and should be enjoined from further deductions. Plaintiffs further assert that defendants are attempting to circumvent the purpose of the Trade Act of 1974 by requiring plaintiffs to repay amounts received in TRA benefits to the SUBenefit fund.

Defendants separately move to dismiss plaintiffs' complaint under Fed. R. Civ. P. 12(b)(6). In support of their motions defendants refer the Court to the affidavit of James H. Gleason, Supervisor, Benefit Plan Administration, GMC, the affidavit of Leonard R. Page, Associate General Counsel, UAW, and the brief of defendant GMC in opposition to plaintiffs' complaint for preliminary injunction. Since the Court has utilized those affidavits in conjunction with the pleadings of the parties to resolve

this matter, defendants' motions to dismiss will more properly be considered as motions for summary judgment. *Taylor v. Royal Insurance Co.*, 33 F.R.D. 521 (W.D. Mo. 1963); Fed. R. Civ. P. 12(b).

The general rule is that before a suit against a union for breach of its duty of fair representation may be brought in the courts, the member must first exhaust the available internal union remedies or show an adequate reason for failing to do so. *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87, 104 (3d Cir. 1968), *cert. denied*, 393 U.S. 1048 (1969); *Miller v. Local 50, Am. Fed. of Grain Millers*, 468 F. Supp. 193, 198 (D. Neb. 1979); *Florey v. Air Line Pilots Ass'n. Intern.*, 439 F. Suppl. 165, 170 n.1 (D. Minn. 1977), *aff'd*, 575 F.2d 673 (8th Cir. 1978); *Emmanual v. Omaha Carpenters Dist. Council*, 422 F. Supp. 204, 207 (D. Neb. 1976), *aff'd*, 560 F.2d 382 (8th Cir. 1977); *Price v. International Bro. of Teamsters, Chauffeurs, Etc.*, 46 F.R.D. 18, 23 (E.D. Pa. 1969). Plaintiffs forward the inability to obtain assistance from UAW as the reason for failing to exhaust their internal remedies. The Court has previously noted that UAW processed the appeal to the Board of Administration on plaintiffs' behalf. That action taken by UAW, Local 25 strikes contrarily to plaintiffs' position. However, the Court will not dismiss the action for plaintiffs' failure to exhaust their internal remedies. Instead, the Court will rule on the merits in an effort to expedite the final resolution of this problem.

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903 (1967). Plaintiffs basically have two main arguments concerning this claim; (1) that UAW inadequately advised plaintiffs regarding TRA benefits which resulted in plaintiffs having to repay amounts to the SUBenefit fund; and (2) that UAW failed to represent plaintiffs in an action

to stop the deductions from plaintiffs' wages. The first contention does not raise the conduct of UAW to the level where the Court would find that the union's actions were arbitrary, discriminatory or done in bad faith. UAW filed for and received TRA benefits for its members. Plaintiffs have cited no authority that imposes a greater obligation on UAW. Mere conclusionary allegations fail to establish the requisite elements needed to support a claim for unfair representation. *Balowski v. U.A.W.*, 372 F.2d 829 (6th Cir. 1967); *cited with approval in Mavis v. Brotherhood of Railway, Airlines, and Steamship Clerks*, 585 F.2d 926, 930 8th Cir. 1978).

Plaintiffs second argument concerning UAW, which alleges that the union failed to represent them in their appeals to stop the payroll deductions, is totally without merit. Again, union members of the UAW, Local 25, appealed the Local Committee's decision to the Board of Administration on plaintiffs' behalf. Thus, in summary, plaintiffs have failed to establish a disputable case as to whether action or inaction by UAW regarding TRA benefits was arbitrary, discriminatory or in bad faith. Plaintiffs' claim that UAW failed to assist them in their appeals of the action taken by GMC is not supported by the record. Therefore the claims against UAW for unfair representation must be resolved in favor of the union.

Accordingly the decision of the Board of Administration must stand. Article V, Section 3(b)(2)(vi) of the Supplemental Agreement provides

> (vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim

or issue on which the Board is empowered to rule hereunder.

Absent a showing that UAW breached its duty of fair representation and that such breach seriously undermined the dispute resolution procedure, the decision of the Board of Administration is final. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S. Ct. 1048 (1976); *United Steelworkers of America v. Enterprise Wheel & Car Co.*, 360 U.S. 593, 80 S. Ct. 1358 (1960). Inasmuch as the Court has determined in the instant case that UAW did not breach the duty of fair representation, the decision of the Board of Administration must stand and plaintiffs must repay any overpayments of SUBenefits.

Plaintiffs further maintain that GMC is subverting the purpose of the Trade Act by requiring plaintiffs to use TRA benefits to replenish the SUBenefit fund. Plaintiffs have failed to show the basis for this contention. The Court simply notes that Article II, Section 6[1] of the Supplemental Agreement requires that any *overpayment of SUBenefits* shall be returned. It strains reason to assume that TRA benefits necessarily must be used to repay the SUBenefit fund.

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[1]Article II § 6 of the Supplemental Agreement provides in pertinent part:

Section 6, Benefit Overpayments

(a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is applicable; provided, however, that no repayment shall be required if the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

One of the purposes of the Trade Act is to "provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firm(s), workers and communities *to adjust* to changes in international trade flow." (Emphasis added.) 19 U.S.C. § 2102(4). The SUBenefit plan is designed to provide 95 percent of weekly after-tax pay for the unemployed worker. Included in that 95 percent are any unemployment benefits derived from other sources. Such a goal is commensurate with that of the Trade Act to the extent that it aids the employe in *adjusting* to his unemployment. Plaintiffs' contention would lead to an anomalous result. Under plaintiffs' theory, workers would actually benefit more from their unemployment. According to the affidavit of Leonard Page, which has not been refuted by plaintiffs, an unemployed worker could actually receive between 160 and 190 percent of his usual take-home pay if he were permitted to collect his unemployment benefits in the manner prescribed by plaintiffs. Clearly such a result is in sharp contrast with the spirit and purpose of the Trade Act. Therefore the Court finds that the policy and purpose of the Trade Act will not be subverted by requiring plaintiffs to repay any overpayments of SUBenefits.

Plaintiffs' final argument asserts that the deductions of amounts from plaintiffs' wages by GMC, without plaintiffs' consent, violated Missouri law. MO. REV. STAT. § 432.030, *et seq*. Defendant GMC counters that federal law is applicable, which allows such deductions according to the Supplemental Agreement. The Court does not rule on the applicable law at this time inasmuch as the record reflects that plaintiffs indeed consented to the deductions. Article II, Section 6(b)(1) and (2) of the Supplemental Agreement provides:

> (b) If the Employe shall fail to return such amount of overpayment promptly:

(1) with respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits of compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and

(2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.

The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

By applying for and receiving the SUBenefits, the plaintiffs agreed to comply with the provisions of the Supplemental Agreement. Plaintiffs cannot now request this Court to undo those acts to which they have agreed.

In conclusion, it bears reiteration that defendants' motions to dismiss are treated as if they were presented as motions for summary judgment. In a motion for summary judgment, the burden is on the movant to show there is no genuine issue of material fact and that movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Based on matters in the record, many of which have not

been refuted by plaintiffs, the Court is of the opinion that defendants have met their burden. Therefore,

IT IS HEREBY ORDERED that summary judgment is GRANTED in favor of the defendants General Motors Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

SO ORDERED.

Dated this 27th day of October, 1981.

/s/ CLYDE S. CAHILL

Clyde S. Cahill
United States District Judge